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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x  
4 UNITED STATES OF AMERICA  
v.

23 CR 118 (AT)  
Arraignment/Bail

5 HO WAN KWOK  
6 YANPING WANG  
7 Defendants  
-----x

8  
9 New York, N.Y.  
10 April 4, 2023  
11 11:30 a.m.

12 Before:

13 HON. ANALISA TORRES  
14 District Judge

15 APPEARANCES

16 DAMIAN WILLIAMS  
17 United States Attorney for the  
18 Southern District of New York  
19 RYAN B. FINKEL  
20 JULIE MURRAY  
21 MICAH FERGENSON  
22 Assistant United States Attorneys

23 BROWN RUDNICK LLP  
24 Attorneys for Defendant Kwok  
25 STEPHEN COOK  
WILLIAM BALDIGA

26 LIPMAN LAW PLLC  
27 Attorney for Defendant Wang  
28 ALEX LIPMAN

29 CHAUDHRY LAW PLLC  
30 Attorney for Defendant Wang  
31 PRIYA CHAUDHRY

32 ALSO PRESENT: KARINA CHIN VILLEFORT, PTS (SDNY)  
33 GEOFFREY MEARNS, Paralegal Specialist (USAO)  
34 BRENDA CHEN, Interpreter (Mandarin)

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1 (In open court)

2 THE COURT: Good morning.

3 We are here in the matter of the United States v. Ho  
4 Wan Kwok and Yanping Wang.

5 Would you make your appearances, please.

6 MR. FINKEL: Good morning, your Honor. Ryan Finkel  
7 Julie Murray and Micah Fergenson for the United States. We're  
8 joined today at counsel table by Geoffrey Mearns, who is a  
9 paralegal in our office.

10 MR. COOK: Stephen Cook and William Baldiga on behalf  
11 of Mr. Kwok, who is present in custody and being assisted by a  
12 Mandarin interpreter.

13 MR. LIPMAN: Your Honor, Alex Lipman of Lipman Law  
14 Firm PLLC, and at counsel table also Priya Chaudhry of the  
15 Chaudhry Law Firm PLLC for defendant Yanping. Ms. Wang is  
16 here, she is present, and she is being assisted by a Mandarin  
17 interpreter.

18 THE COURT: Please be seated.

19 I would like the interpreter to identify herself,  
20 please.

21 THE INTERPRETER: Good morning, your Honor. My name  
22 is Brenda Chen. I'm a certified court Mandarin interpreter.

23 THE COURT: Please swear in the defendants.

24 (Defendants sworn)

25 THE COURT: Please be seated.

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1                   Mr. Kwok and Ms. Wang, I'm going to ask some  
2 questions. Wait for me to call your name, and then you  
3 may answer.

4                   Do you understand what the interpreter is saying?

5                   Mr. Kwok?

6                   DEFENDANT KWOK: Yes, your Honor.

7                   THE COURT: Ms. Wang?

8                   DEFENDANT WANG: Yes, I do.

9                   THE COURT: Do you understand that you're now under  
10 oath, and that if you answer any of my questions falsely, you  
11 may be prosecuted for perjury based on any false answers?

12                  Mr. Kwok?

13                  DEFENDANT KWOK: Yes.

14                  THE COURT: Ms. Wang?

15                  DEFENDANT WANG: Yes.

16                  THE COURT: I understand that I must first arraign  
17 both defendants, correct?

18                  MR. FINKEL: Yes, your Honor.

19                  THE COURT: Do you each have a copy of superseding  
20 indictment?

21                  Mr. Kwok?

22                  DEFENDANT KWOK: Yes.

23                  THE COURT: And Ms. Wang?

24                  DEFENDANT WANG: Yes, your Honor.

25                  THE COURT: Has the document been translated for you?

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1 Mr. Kwok?

2 DEFENDANT KWOK: Yes.

3 THE COURT: Ms. Wang?

4 DEFENDANT WANG: Yes.

5 THE COURT: Do you want me to read it to you or do you  
6 waive its public reading?

7 Mr. Kwok?

8 MR. COOK: Mr. Kwok waives reading of the indictment,  
9 your Honor.

10 THE COURT: Ms. Wang?

11 MR. LIPMAN: Your Honor, Ms. Wang waives the reading  
12 of the indictment and asks a plea of not guilty be entered.

13 THE COURT: How do you plead, guilty or not guilty?

14 Mr. Kwok?

15 DEFENDANT KWOK: Not guilty.

16 THE COURT: And Ms. Wang?

17 DEFENDANT WANG: Not guilty.

18 THE COURT: A plea of not guilty will be entered for  
19 each defendant, and the record should reflect that both  
20 defendants have been arraigned.

21 I'm now going to address Mr. Kwok's bail application,  
22 which the government opposes.

23 I have reviewed the parties' submissions dated  
24 March 15, 28, and 31 of this year, and April 3 of this year. I  
25 have also reviewed the pretrial services report dated March 15

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1 of this year. Judge Lehrburger will hear Ms. Wang's bail  
2 application today at 2:00 p.m.

3 Mr. Kwok has been detained since March 15, the date of  
4 his arrest. He was arraigned on the preceding indictment  
5 before the Honorable Katharine H. Parker and detained on  
6 consent without prejudice to a future bail application.

7 Pursuant to 18 United States Code, Section 3142(e),  
8 the question I must resolve is whether there is a condition or  
9 combination of conditions that will reasonably assure the  
10 appearance of the defendant as required and the safety of any  
11 other person and the community.

12 To make this bail determination, I must undertake a  
13 two-step inquiry. First, I must determine whether the  
14 government has established by a preponderance of the evidence  
15 that Mr. Kwok presents a serious risk of flight or obstruction  
16 of justice. 18 United States Code, Section 3142(f)(2). *United*  
17 *States v. Friedman*, 837 F.2d 48, 49 (2d Cir. 1988). If the  
18 government carries this initial burden, I must then determine  
19 whether there are reasonable conditions of release that can be  
20 set or whether detention is appropriate. To support detention  
21 based on danger, the government's proof must be clear and  
22 convincing. 18 United States Code, Section 3142(f)(2).

23 The factors that I must consider in making my  
24 determination are set forth in 18 United States Code, Section  
25 3142(g). They include the nature and circumstances of the

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1 offense charged, including whether the offense is a crime of  
2 violence, a violation of United States Code, Section 1591, a  
3 federal crime of terrorism, or involves a minor victim or a  
4 controlled substance, firearm, explosive or destructive device;  
5 the weight of the evidence against the defendant; the history  
6 and characteristics of the defendant, including his or her  
7 physical and mental condition, family ties, employment,  
8 financial resources, length of residence in the community,  
9 community ties, past conduct, history relating to drug or  
10 alcohol abuse, criminal history, record concerning appearance  
11 at court proceedings and whether at the time of the current  
12 offense or arrest the defendant was on probation, on parole or  
13 other release pending trial, sentencing, appeal or completion  
14 of a sentence for an offense under federal, state and/or local  
15 law; and the nature and seriousness of the danger to any person  
16 or the community that would be posed by defendant's release.

17 I have carefully considered all of these factors and  
18 the parties' written submissions.

19 Does the government wish to be heard?

20 MR. FINKEL: Yes, your Honor.

21 Your Honor, there are many aspects of this case, as  
22 the Court may be familiar with the indictment, that are  
23 extraordinary. This is a billion dollar fraud case, in which  
24 Mr. Kwok preyed on thousands of individuals to line his own  
25 pockets with extraordinary luxurious items. But the issue

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1 today, your Honor, isn't extraordinary. It's actually quite  
2 straightforward. A simple application of the factors that the  
3 government has outlined in its letters to the legal framework  
4 that the Court just went through makes clear that detention is  
5 appropriate is in this case.

6 As this Court knows, pretrial services doesn't often  
7 recommend detention in a fraud case, but they've recommended it  
8 here, and for good reason. This court should adopt that  
9 recommendation.

10 I want to start first with the risk of flight. As the  
11 Court mentioned, the government's obligation is to demonstrate  
12 just by a preponderance that there is a risk of flight with  
13 respect to the defendant. So what we have here again, pretty  
14 straightforward: An exceptionally wealthy, exceptionally  
15 well-connected, exceptionally sophisticated, deeply experienced  
16 world traveler, who is 54 and has barely spent five continuous  
17 years in this country. He has at least three, and as many as  
18 eleven, different passports. He has a co-defendant who's  
19 currently fugitive who's in the UAE right now, or believed to  
20 be. The defendant has access to private aircraft and a  
21 compelling, exceptionally compelling, motive to flee, your  
22 Honor.

23 As a result of the charges in this case, the defendant  
24 faces decades in prison. The evidence is incredibly strong.  
25 It's not even really disputed by the defense in their briefing.

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1 The indictment itself describes it in detail. At the end of  
2 the day, your Honor, simply following the money that the  
3 defendant collected, following the money into the pockets of  
4 his wife, his children, and himself demonstrates his  
5 involvement in this epic fraud.

6 So, again, given the incentive structure, why would  
7 the defendant stay? It's simple rational thinking. Why would  
8 he subject himself to the court process, to potentially decades  
9 in prison, followed by likely deportation, if he can take  
10 advantage of an alternative, the alternative of flight.

11 So the defense claims in its briefing that he  
12 essentially is incentivized to remain for two primary reasons:  
13 The first is that his wife and his daughter are here in the  
14 United States, but his wife and his daughter have been here  
15 even less time than he has been, and they have an incentive to  
16 flee as well. They're referred to in the indictment; they were  
17 recipients of the fraud money; and they can leave the country  
18 just as easily as the defendant can.

19 And, in any event, the defendant has a son in the  
20 United Kingdom, in a foreign country. He certainly would be  
21 incentivized to spend time with his son, to be with his son in  
22 the same way the defense claims he is incentivized to stay to  
23 be with his wife and daughter.

24 Defendants, your Honor, in this courthouse flee with  
25 far less global reach than Kwok has. People are willing to

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1 rearrange their lives who have been here for decades to avoid  
2 prison. Kwok doesn't even have any meaningful ties in this  
3 country that make such a rearrangement impossible or even  
4 difficult. He's been here, according to the defense,  
5 continually since approximately 2017. That's it. And  
6 according to the indictment, he's been involved in this  
7 conspiracy since 2018, which means his ties to the United  
8 States, your Honor, are about laying the groundwork for and  
9 committing a billion dollar fraud.

10 That brings us to the second reason the defense says  
11 he's incentivized to stay. They claim he cannot travel  
12 anywhere because of fear of being repatriated to China. But  
13 that argument doesn't withstand scrutiny either, as we've  
14 outlined, your Honor. According to the defense, the defendant  
15 fled China in 2015 to escape China. If he was concerned about  
16 the Chinese trying to capture him or repatriate him at that  
17 time, according to the defense, he wouldn't travel  
18 internationally; yet, he did. Even the defense concedes he  
19 traveled from 2015 to 2017. His passports make that clear. So  
20 he traveled. He wasn't afraid to travel internationally. He  
21 wouldn't be afraid to travel internationally now.

22 Then we turn to does the defendant have the ability to  
23 flee? This too, your Honor, is fairly straightforward. Kwok  
24 has means; he has sophistication; and he has connections, which  
25 all make his ability to flee, like I said, straightforward.

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1                   I mentioned the passports. But that's not all he has.  
2 As the government outlined, your Honor, he had \$394,000 in  
3 cash - cash that he didn't tell pretrial services about - in  
4 his safe in his mansion in New Jersey. He had another hundred  
5 thousand worth of gold coins, foreign currency; and his  
6 co-defendant had more than a hundred thousand dollars in a safe  
7 in her condo.

8                   There was also a document in his co-defendant's  
9 apartment demonstrating that Kwok has access to \$34 million in  
10 bank accounts. And, your Honor, I can tell the Court that the  
11 government has worked quite hard in tracing the fraud proceeds  
12 in this case, and we've traced it not just throughout the  
13 United States, but we've tried to trace it internationally.  
14 And what we've seen is money flowing to Switzerland, to the  
15 UAE -- which I'm going to talk more about -- to England, and  
16 possibly even Kazakhstan. Yet, the defendant claims that he --  
17 let me take a step back for a second.

18                   So does the defendant have the financial means to  
19 flee? Absolutely. And it's impossible for this Court to have  
20 any reasonable assurance of where that bottom is, where his  
21 money is, particularly because he lied to pretrial services  
22 about the \$394 plus thousand that he had in his mansion.

23                   So let's turn to know-how. Does the defendant have  
24 the know-how, the sophistication to flee. Again, simple,  
25 straightforward. Yes, he does. This is a man who has

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1 cellphone scramblers, Faraday bags, burner phones, obfuscates  
2 his funds, uses shell companies, uses intermediaries, and, as I  
3 mentioned, has at least three and possibly as many as eleven  
4 passports. He's a deeply experienced world traveler, who  
5 admitted to pretrial services to traveling to over 50 different  
6 countries. That's exceptional. He certainly has a  
7 sophistication and know-how to flee.

8 Then the question becomes does he actually have  
9 anywhere to go? And the answer to that, your Honor, again  
10 simple, straightforward. Yes, he clearly does. He has a UAE  
11 passport somewhere. We don't know where it is. We have a copy  
12 of it. But what that UAE passport shows is that he's likely a  
13 citizen of that country because when you hold a passport that  
14 indicates citizenship for a particular country -- and we  
15 checked with the office of international affairs, DOJ's OIA  
16 office on this -- the UAE does not extradite citizens.

17 And, of course, your Honor, his co-defendant is in the  
18 UAE right now, or at least we believe him to be. There are  
19 operations for G Clubs, which is an arm of his fraud in the  
20 UAE. There are operations for the Himalaya Exchange in the  
21 UAE, another arm of his fraud. There were two personnel, two  
22 employees of G Club who spent months in the UAE and were able  
23 to obtain visas in the UAE. The defendant can go to the UAE.  
24 He would be safe, effectively safe from the reach of the  
25 government there, and he knows that because he's made

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1 statements about that.

2 So has the government established by a preponderance  
3 that the defendant is a risk of flight? Yes. And there really  
4 shouldn't be much of a serious dispute about that. So then the  
5 question becomes what conditions -- are there conditions that  
6 the Court can impose to reasonably assure that there will not  
7 than a flight? There aren't any.

8 So let's start with what the defense has put forth.  
9 They put forth a \$25 million bond secured by \$5 million cash.  
10 Now, if we take a step back for a moment, what is the purpose  
11 really of a bond? The purpose of the bond, your Honor, is to  
12 change the incentive structure because the defense is  
13 incentivized to flee, he's incentivized to get away from  
14 possible prison, right? So the thinking of a bond is if he  
15 flees, he loses money. So that's supposed to flip the  
16 incentive. But it doesn't here. It can't here.

17 And why is that? Because, as the defendant said in  
18 his pretrial services report, he claims not to have any money,  
19 and whatever money he does have is subject to the bankruptcy  
20 proceedings, which is to say all of his money is either  
21 forfeitable or encumbered by bankruptcy, so there is no money  
22 he could put up that will provide any moral suasion for him to  
23 remain.

24 And this, your Honor, it's also important to keep this  
25 in mind. The defendant has an uncanny ability to convince

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victims to depart with hundreds of millions of dollars. In just weeks, he raised \$400 plus million from thousands of victims. So if he were to lose \$5 million, which is really all he's offering, \$5 million cash, what cost for him? Really none. He can earn it again.

And that should raise another question. Where is this \$5 million coming from? If he told pretrial services that his net worth is \$10,000 comprised of the value of his clothing and two cellphones, where is this \$5 million? \$5 million that he hasn't told the bankruptcy trustee about. So there's no money. There's no PRB that could be offered here that flips the incentive for the defendant to remain.

What about cosigners? Your Honor, given the allegations in this case, the defendant's fraud is, quite frankly, sociopathic. He has taken money from thousands. Victims have cried in interviews that we have held with them explaining how their lives have been forever altered and damaged by the money that he has used to purchase Lamborghinis and Bugattis and \$30,000 mattresses. He's not going to care if by leaving this country to avoid prison he saddles a couple of people, who he hasn't even named, with a \$25 million judgment.

So, the defense, I would argue, your Honor, tacitly concedes all of this. They say that the PRB cosigners are really insufficient and so what they offer instead is or on top is this proposal of armed security. Now, the mere fact that

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1 this is proposed, I submit, this Court should swiftly reject  
2 it. Second Circuit, we pointed this out, disapproves of these  
3 two-tiered approaches to American justice where the rich get to  
4 provide their own private security; in this case, in a  
5 defendant's palatial Connecticut estate, where as those without  
6 access to his means are subject to the federal system. That's  
7 not fair. That's not right. And this Court shouldn't endorse  
8 it.

9                   But even putting that aside, even putting what the  
10 Second Circuit said aside -- and we don't think this Court  
11 should -- these security arrangements don't work. They don't  
12 work because of incentives. Security personnel are, at least  
13 according to the defense, will be answerable to the Court and  
14 government. But it doesn't really work that way because  
15 they're going to be paid by him. They're going to paid by the  
16 defendant, and security is going to be incentivized to continue  
17 to get paid. And security is going to be incentivized not to  
18 tell the Court when the defendant does something he shouldn't  
19 do because it might risk him being remanded; it might risk  
20 security being unable to continue getting paid by the  
21 defendant. Security does not work. And if it is true, as the  
22 defense claims, that the only way for the Court to be  
23 reasonably assured that the defendant won't flee is for him to  
24 be surveilled 24 hours a day, seven days a week by an armed  
25 guard, there's a proper place for that. And that's the MDC.

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1           But there's something else, your Honor, even putting  
2 aside those conditions. Ultimately, when a Court permits  
3 pretrial release, it's about trust. It's about trust that a  
4 defendant will appear in court as required. It's about trust  
5 that a defendant will not endanger the community, which I'll  
6 talk about. There is no reason for this Court to trust the  
7 defendant, simply based on what has happened since he was  
8 arrested. He lied about money that he had in his safe, nearly  
9 \$500,000 of it. He didn't disclose his travel documents. He  
10 circumvented the rules of the MDC, as we've explained in our  
11 papers. There's no reason for this Court to trust him just on  
12 those records. And I'm not even talking about what has  
13 happened in other cases, which I'll turn to.

14           In fact, let's talk about obstruction. At least three  
15 different judges, in both federal and state court, have found,  
16 in effect, that the defendant obstructs justice. Judge  
17 Ostrager, New York State Supreme Court, said, I'm quoting, "The  
18 defendant's efforts to avoid and deceive his creditors by  
19 parking his substantial personal assets with a series of  
20 corporations, trusted confidantes and family members," which is  
21 to say, your Honor, a judge found he moves money around to hide  
22 it from the judicial process.

23           Judge Ostrager is not alone. Judge Manning, a  
24 Bankruptcy Judge in the District of Connecticut, found similar  
25 actions that Kwok has taken. And even worse, Judge Manning

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1 found the defendant fomented unrest, threatened a  
2 court-appointed bankruptcy trustee, resulting in death threats,  
3 resulting in harassment. And this is on video. This is what  
4 the defendant said on video about that bankruptcy trustee.

5 On November 21, 2022, according to the bankruptcy  
6 judge's findings, "To deal with this rogue" -- I'm quoting,  
7 rogue being the trustee -- "we have our rogue's ways. In a few  
8 days you will see what would happen to him. Calamities, I can  
9 tell you guys. They will suffer calamities!"

10 On top of that, he encouraged his followers to flood  
11 the bankruptcy docket with false claims, to tie up the  
12 bankruptcy, to cause the trustee to expend additional resources  
13 to cause problems. We talked in our papers about how he's  
14 threatened victims, victims in this case; how he's threatened  
15 them by saying he would post associations between him and the  
16 victim, victims who have family in China, and thereby him  
17 posting publicly that he was associated with those victims  
18 would threaten the victims' families who happen to be in China.

19 This is all definitional obstruction. It's not  
20 theoretical. It's not speculative. It's not even isolated.  
21 It's continuous. It's ongoing. It spans multiple years,  
22 multiple courts, multiple judges, and the defendant is  
23 exceptional in his willingness to continue to do this unabated.

24 So has the government demonstrated that there's a risk  
25 of obstruction if he's released? Yes, we certainly have.

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1                   So, step two, what conditions can be imposed to  
2 prevent obstruction? The answer is there are none. There  
3 aren't any. Pretty much all this Court could do is ask the  
4 defendant not to obstruct. But we know that doesn't work.  
5 Because that was tried in the bankruptcy court in Connecticut.  
6 That was tried in the New York State Supreme Court. He doesn't  
7 follow court orders. To the defendant, a court's order isn't  
8 worth the paper that it's printed on. His low regard for the  
9 judicial process and respect for due process is remarkable.  
10 And it shows that there are no conditions that can change that  
11 because if there were, it would have already happened. So  
12 again, this is straightforward. He should be detained.

13                   Let's turn to danger. The defendant's willingness to  
14 defraud for years thousands upon thousands of individuals is  
15 quite something. He's not stopped despite the many offramps  
16 that have been the flag, the red flags he's seen, the  
17 intervention of the SEC, the government's seizure of  
18 \$630 million, his embroilment in various litigations, the fact  
19 that entities of his received grand jury subpoenas, the fact  
20 that he knew the government was on his tail, he kept going.

21                   And in February 2023, just essentially weeks before  
22 his arrest, he announced a new offering, the A10 offering.  
23 That's what he called it. And he claimed that this offering  
24 was a way for investors to invest 5 percent -- to purchase  
25 5 percent of the Himalaya Exchange and 5 percent of a social

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1 media company called Gettr. And like the other investments  
2 that the defendant has proclaimed and promoted, this too had  
3 all the hallmarks of fraud. He claimed it was guaranteed and  
4 that they would get their money back and everyone would make  
5 all this great money.

6 But the difference about the A10 offering, your Honor,  
7 this I think speaks to obstruction and also risk of flight, the  
8 of point of it was that the money was going to be sent to the  
9 UAE, away from -- and using Kwok's words -- the long-arm  
10 jurisdiction of the United States.

11 So is he a continuing danger to the community?  
12 Absolutely, because he hasn't stopped. He hasn't stopped after  
13 the SEC intervened in the GTV Private Placement, after his bank  
14 accounts were closed, after many of his entities received  
15 subpoenas, and after the government executed \$630 million of  
16 bank account seizures.

17 Indeed, your Honor, the money that the SEC was able to  
18 intervene and save from being defrauded with respect to GTV  
19 Private Placement, it's now being distributed. It's in the  
20 process of being distributed to the victims through a fair fund  
21 distribution. And what the defendant has done is encouraged  
22 his victims to reinvest that money in other fraudulent  
23 vehicles, which is to say he keeps going. He keeps going.

24 So what conditions could the Court impose that would  
25 stop all of this? The defense basically offers one. The

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1 defense offers the condition of if he wants to engage in a  
2 financial transaction, he must get either the government's or  
3 the Court's approval. But this condition is meaningless. It's  
4 meaningless because he lies to pretrial services. He  
5 circumvents court orders. It's something that can't possibly  
6 work because the defendant can't be trusted.

7 But more than that, your Honor, as I've explained and  
8 as our papers made clear, he works through intermediaries and  
9 shell corporations. He has the ability to conduct fraud  
10 without himself, at least on paper, signing a financial  
11 transaction. He can work through others. And that's how this  
12 whole fraud worked, which is all to say, your Honor, there are  
13 no conditions that can prevent the deep, ongoing danger that  
14 the defendant presents to this community.

15 Your Honor, given all of this, the defendant's  
16 incentive structure, he is highly incentivized to flee, his  
17 deep resources, his connections, his network of supporters who  
18 will harbor him, his documented unwillingness to follow court  
19 orders, his threats against court-appointed officials,  
20 including some of the people at this table, his sophistication,  
21 his multitude of travel documents, his access to cash, his  
22 willingness to lie to pretrial, his willingness to circumvent  
23 rules in the MDC, his concealment of funds, there are no  
24 conditions, your Honor. There are none that can reasonably  
25 assure the Court that he won't flee; that the community will be

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1 safe; and he will not obstruct these proceedings.

2 Pretrial services is correct: The Court should follow  
3 their recommendation and detain the defendant pending trial.

4 THE COURT: I'll hear from counsel for Mr. Kwok.

5 MR. COOK: Good morning, your Honor. Stephen Cook on  
6 behalf of Mr. Kwok.

7 Just as an initial matter, your Honor, we've seen no  
8 evidence that Mr. Kwok threatened anyone at the table, at the  
9 prosecution table. I would certainly be interested in seeing  
10 that because I'm aware of none of that. He's been in custody  
11 since March 15, and we've seen no evidence of any threats being  
12 issued to any members of the prosecution team or anyone else,  
13 for that matter.

14 Let me just address the very first question that  
15 Mr. Finkel stated: Why would he stay? There are many reasons  
16 why Mr. Kwok would stay, and there are even more reasons why he  
17 would never leave. I want to go through each of the arguments  
18 made by the government, but I want to address first this idea  
19 that the UAE is this ideal place for Mr. Kwok to abscond to.

20 And the government begins by saying that he has three  
21 passports. The government knows that's not true. As they  
22 state in their own paperwork, this passport to the country of  
23 Vanuatu expired years ago, and it's in their possession in any  
24 case.

25 The UAE passport that they don't have, but they claim

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1 that he has, was returned to the UAE government years ago. He  
2 renounced his citizenship to the UAE years ago, and received a  
3 letter from the UAE government, which I can present to the  
4 Court and the prosecution. I would have filed this, but we  
5 just learned of this issue yesterday in government's filing.

6 April 11, 2018, he renounces his citizenship, and the  
7 UAE confirmed that renunciation. That passport was returned by  
8 his immigration counsel to a representative of the UAW  
9 government. So he has no UAE passport. He has no passport to  
10 Vanuatu. He has no citizenship with that nation. The third  
11 passport they reference is one to Hong Kong, the very nation  
12 that he fled from, and that passport is in the government's  
13 possession. So of the three passports they claim are available  
14 for him to use, there are zero, none. And I don't think there  
15 can be any dispute about that.

16 Now, Mr. Finkel says quote that "Mr. Kwok knew the  
17 government was on his tail." And that's absolutely correct.  
18 Hundreds of millions of dollars seized, grand jury subpoenas  
19 issued, SEC subpoenas issued; Mr. Kwok has known that he is a  
20 target of a federal criminal investigation for the better of a  
21 year. And despite his alleged sophistication, despite being  
22 essentially a criminal mastermind, an escape artist, what did  
23 he do with that knowledge? With all of the resources they  
24 claim he has, with the passports he says -- they say he has  
25 access to, with all the supporters worldwide, what did Mr. Kwok

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1 do in the face of that knowledge that the government was on his  
2 tail?

3 He did nothing. He didn't leave. He went nowhere.  
4 He continued to reside in the same residences he had been in  
5 for years. All of the evidence that they identify that was  
6 found during the search that they point to as evidence of his  
7 being a risk of flight: The multiple cellphones, the cellphone  
8 scrambler, Faraday bags, cash. If he was this criminal  
9 mastermind, knowing the government is on his tail, he left all  
10 of those materials in the worst possible place, the place the  
11 government knew that he resided.

12 Mr. Kwok was not unfamiliar with an FBI search. Years  
13 ago the FBI had searched the Sherry-Netherland residence where  
14 he was arrested. He knows how thorough they are. He knows  
15 what's involved and how many agents show up. Yet, despite that  
16 knowledge and despite the government being on his tail, he did  
17 nothing to hide computer equipment or cellphones, with the  
18 exception of putting one under his mattress, as if that was  
19 going to remain unfound by the FBI. This was not evidence of a  
20 man seeking to flee. It was evidence of a man who had decided  
21 to stay in the face of the accusations that he knew were coming  
22 any day.

23 Why didn't he leave? Well, first of all, there's a  
24 Red Notice against him issued by China. We laid out in great  
25 detail in our papers why he fled China, why he can never go

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1 back to China, and why they want him, and the enormous efforts  
2 the Chinese government and the Chinese Communist Party in  
3 particular, have taken to try and get him back in their  
4 clutches.

5 This is documented. You read about it, and it sounds  
6 like it comes from a spy novel. And then you start looking at  
7 the sources and you realize this all really happened.  
8 High-level DOJ officials being bribed to get our government to  
9 extradite him to China. There's a trial going on in Washington  
10 D.C. right now in which an individual failed to register as a  
11 Chinese foreign agent, who was lobbying our government  
12 illegally to get this man extradited back to China. Four  
13 agents of the Chinese intelligent service accosted Mr. Kwok in  
14 his home, threatened him, and tried to get him to return to  
15 China. They were arrested by the FBI, and because of  
16 interjurisdictional squabbles between the State Department and  
17 DOJ, they were not arrested, and they were allowed to return to  
18 China. But the Chinese Communist Party's interest in my client  
19 is well documented, well-known and indisputable.

20 That's why you have cellphone scramblers. The Chinese  
21 government hacks at every opportunity every electronic device  
22 that Mr. Kwok has. As soon as it's hacked, he replaces it with  
23 another one, over and over and over again. That's why you have  
24 so many phones and so many computers. That's why there's a  
25 cellphone scrambler which was recommended to him by the

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1 security service that he hired to help him prevent this  
2 hacking. The Faraday bags designed to prevent hacking. Not by  
3 the U.S. government. They weren't hidden from the FBI. But to  
4 minimize or help reduce the risk that they would be hacked by  
5 the Chinese Communist Party, as has been done over and over and  
6 over again.

7 One of the things we didn't mention in our papers, but  
8 we recently discovered was that back in 2019 and 2020 Twitter,  
9 the social media platform, took down over 200,000 fake accounts  
10 all created by the Chinese Communist Party to spew Chinese  
11 propaganda. And that propaganda fell into four categories.  
12 This is all spelled out by in a report generated by Stanford  
13 University. Those four categories, not surprising, were  
14 Taiwan, the pro democracy movement in Hong Kong, and the second  
15 most prevalent topic, of Chinese propaganda, was Mr. Kwok  
16 personally individually documented in the Stanford report.

17 The level of attention that Mr. Kwok generates from  
18 the Chinese Communist Party is undeniable and extreme. So he  
19 has gone through extreme efforts to protect his ability to  
20 broadcast his message to his followers with minimal or reduced  
21 obstruction from the Chinese Communist Party. That's why you  
22 see all of these elements that you would typically find from a  
23 spy novel, for example, present in his apartment. Not because  
24 he's hiding it from the U.S. Government. He's trying to  
25 protect his ability to get his message out to the millions of

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1 followers that he has worldwide.

2 I want to address the government's arguments  
3 individually

4 THE COURT: I would like you to go back to the issue  
5 of the passports. Is it your position that he has no valid  
6 passport?

7 MR. COOK: The only valid passport that we're aware  
8 of -- and Mr. Kwok wasn't even aware of this until we saw it in  
9 the government's filing -- is the Hong Kong passport that was  
10 in his co-defendant's possession, that the government now has.  
11 That was the only currently valid passport. The other two he  
12 previously had -- Vanuatu and UAE -- he renounced his  
13 citizenship to both of those nations formally as part of his  
14 asylum application years ago. That's it. There are no others.

15 THE COURT: Go ahead.

16 MR. COOK: Concerning Mr. Kwok's extensive  
17 international travel, it's -- well, he did travel extensively  
18 at one point in his life, but for the past six years, he hasn't  
19 stepped foot outside this country. There's many good reasons  
20 for that:

21 (1) His asylum application, which places restrictions  
22 on that sort of travel.

23 (2) The Chinese Red Notice out against him.

24 (3) The four Chinese agents that accosted him in 2017  
25 highlighted and elevated his level of concern as to his own

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1 safety were he to leave the United States to a level that  
2 hadn't been seen before.

3 So he -- for example, his family had planned a couple  
4 of years ago a vacation to Hawaii. He was advised not to even  
5 take that vacation because if there was a mechanical problem  
6 with the plane, it could land at a foreign country, and he  
7 could run into problems. He faces almost certain death if he  
8 is repatriated to China. He will do nothing to jeopardize  
9 that, even if it means spending time in a U.S. prison.

10 The government claims that, well, his asylum  
11 application could be revoked if he's convicted. That may be  
12 true. That's years down the road. That's a hypothetical. The  
13 consequences if he were to leave are a certainty. He would  
14 also have opportunity to seek asylum or protection under the  
15 Convention Against Torture. Yes, that could mean deportation  
16 to a third country, but far preferable to living life on the  
17 run with a Red Notice from the Chinese superpower and another  
18 Red Notice from the American superpower, there's literally  
19 nowhere left in the world for him to reasonably go under those  
20 circumstances. He cannot flee. There is nowhere he can go  
21 where he would be safe. He is here. Whether he wants to or  
22 not, he is here, and he has been here for the past six years,  
23 and that is evidence alone of his desire to remain even in the  
24 face of the government's investigation.

25 The foreign passports we've talked about, your Honor,

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1 and none of them have been used, in any case, for at least six  
2 years.

3 We talked about the UAE. In addition to the  
4 renunciation of that citizenship, Mr. Finkel mentions that  
5 there is no extradition treaty between the United States and  
6 UAE were Mr. Kwok to flee there. That's true. However, the  
7 UAE does have an extradition treaty with China. China and the  
8 UAE have extensive connections. In fact, the UAE is China's  
9 number one beneficiary of foreign investment of all the states  
10 in the Gulf. The relationship between the UAE and China is  
11 well-documented and public. The extradition treaty is public  
12 as well. That is probably the worst place he would go, second  
13 to China itself. So UAE is out. It was never an option, even  
14 were he to want to leave this country.

15 The currency found during the execution of the search  
16 warrants, the hundreds of thousands of dollars. First of all,  
17 the three residences that were searched: The Sherry-Netherland  
18 penthouse, the Greenwich estate, and the property in Mahwah,  
19 none of those properties are owned by Mr. Kwok. They're owned  
20 by other entities or other family members, not him. They are  
21 used by many family members, dozens of employees of many  
22 different companies, not just Mr. Kwok. None of that money was  
23 his. He didn't have access to the safes, and in at least two  
24 of those cases didn't even know those safes existed. They  
25 weren't in his bedroom. One of them belonged to his wife, and

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1 he didn't know the combination. So he didn't lie to pretrial  
2 services. He didn't even know the money was there. That's the  
3 reality.

4 And so the assumptions that are being made by the  
5 government, as they've made assumptions in all these other  
6 areas are skewed entirely in a way to portray Mr. Kwok in the  
7 worst possible light. The reality is the money wasn't his. He  
8 had no reason to disclose something he didn't know existed.

9 Concerning the cellphones and the scrambling device  
10 and Faraday bags, I mentioned that, your Honor. These are  
11 recommendations made by his security staff who made every  
12 effort to try and minimize the hacking that took place. And to  
13 give you another example of just what he and anyone associated  
14 with Mr. Kwok experienced from China.

15 A law firm that was retained to assist him with his  
16 immigration asylum paperwork was hacked. Confidential  
17 information stolen from the law firm and publicly disseminated.  
18 Another law firm that was retained in connection with  
19 bankruptcy proceedings was hosting a conference call with 30 or  
20 40 people from all over the world, including the U.S. trustee.  
21 On the day of that meeting, immediately prior to, that law  
22 firm's entire security system electronically was hacked and  
23 shut down. The elevator system was shut down causing a delay  
24 in the meeting. It never happened before and hasn't happened  
25 since. These sorts of hacking efforts and attempts follow him

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1 wherever he goes simply because of who he is and the message  
2 that he espouses.

3 Concerning the civil lawsuits and the bankruptcy  
4 litigation and Mr. Kwok's alleged disregard for the law, first  
5 of all, it's important to keep in mind that much of the civil  
6 litigation, including the civil litigation that ultimately led  
7 to the bankruptcy filing was prompted by the CCP itself. That  
8 is not just a conspiracy theory. That is a documented fact.

9 In fact, the *Wall Street Journal* in July of 2020 wrote an  
10 article, "China's New Tool to Chase Down Fugitives: America  
11 Courts. Beijing is turning to lawsuits to pressure expatriates  
12 to return home and face corruption charges as an end run around  
13 U.S. law." Their efforts to use the court system to leverage  
14 and exert pressure against people they don't like is documented  
15 and well-known and something that Mr. Kwok knows of firsthand.  
16 So Mr. Kwok has aggressively defended himself in all of that  
17 litigation and in the bankruptcy proceedings.

18 Now, concerning the source of the \$5 million security  
19 for the bond. We never in our papers suggested Mr. Kwok would  
20 or even could himself put umm \$5 million. However, what we  
21 proposed was that there would be two financially responsible  
22 adults who would sign onto that bond, and that the source of  
23 that money would be vetted with the government so they could  
24 assure themselves that the source had nothing to do with the  
25 fraud in this case, and that the two financially responsible

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1 adults, one of whom would not be a family member, they could  
2 also vet to assure not only that they are not purported  
3 victims, but that they had moral suasion over the defendant.

4 The government also claims that Mr. Kwok -- they  
5 allude to this in their paperwork -- that he fails to follow  
6 Bureau of Prisons' procedure in connection with some family  
7 members who wanted to make phone calls with Mr. Kwok, and they  
8 used the legal pathway for legal calls instead of family calls.  
9 We looked into that, your Honor, and, in fact, our ability to  
10 communicate with our client via telephone was shut down because  
11 of that. We found out what happened. It was a mistake. We  
12 wrote to the Bureau of Prisons explaining exactly what  
13 happened. In fact, the person who did this even wrote in the  
14 application for calls "this is for family calls." It was a  
15 language issue and miscommunication on their part that we  
16 corrected. It hasn't happened again and won't happen again,  
17 and our legal calls have been reinstated. This has absolutely  
18 nothing to do with anything Mr. Kwok did or even knew about at  
19 this time, so it would be completely unfair to hold that  
20 against him.

21 We also proposed this round-the-clock 24/7 security.  
22 It's interesting Mr. Finkel says it's not fair and not right  
23 when this exact procedure is something the government has  
24 signed off on in other cases, but apparently in this case it's  
25 not fair and not right. Look, we don't think it's necessary.

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1 We don't think he is leaving. We don't think he would ever  
2 leave this country. However, we offered that as additional  
3 assurance and security that he would in fact remain here and  
4 can be monitored by professionals, and we said armed security  
5 not because we need them to be armed, but because armed  
6 security happened to be current or former law enforcement  
7 adding a level of professionalism. And we can arrange that  
8 engagement in any way the Court deems acceptable so that they  
9 report directly to the marshals, to the FBI or to the Court,  
10 and not to us. We can fashion that engagement in whatever way  
11 works. The government has done this before and done it in an  
12 acceptable fashion. There's no reason why it can't work in  
13 this case as well as an additional layer of protection against  
14 flight.

15           Concerning his purported efforts to contact victims or  
16 set up new businesses or perpetrate additional frauds, that can  
17 be dealt with as well. The Southern District has dealt with  
18 something in the SBF, Sam Bankman-Fried, case where they  
19 restricted his access to any electronic communications to a  
20 single laptop that is restricted to allowing the defendant  
21 access to the discovery so they could review it and to  
22 communicate with lawyers, and nobody else. If that is the  
23 government's legitimate concern that he is going to continue to  
24 communicate with the world and perpetrate frauds, we're  
25 amenable to that condition. There are conditions to satisfy

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1 each of these concerns, and we can fashion them. To date the  
2 government has simply been unwilling to even have a  
3 conversation with us about it, but it's not impossible.

4 Finally, your Honor, I just want to note for the  
5 record and for your Honor that the courtroom is full of many of  
6 Mr. Kwok's supporters, many of whom have traveled from San  
7 Francisco, North Carolina, around the country to be here in  
8 support. These are the purported victims? No, they're  
9 actually his supporters. They are here because they care about  
10 him. They care about his message and his mission in connection  
11 with bringing democracy to China.

12 Your Honor we remain open willing to employ any  
13 reasonable condition as the Court may deem necessary to secure  
14 Mr. Kwok's release. We think what we've proposed is acceptable  
15 and sufficient. We will certainly entertain anything further,  
16 and we're happy to work with the government if they're willing  
17 to tailor or contour our proposal to work out any of the  
18 legitimate issues that they might have

19 THE COURT: I want to go back to the passports.  
20 You're saying that your client wrote to the government of the  
21 United Arab Emirates declaring that he had renounced  
22 citizenship. Is that correct?

23 MR. COOK: Your Honor, I have the letter. If I could  
24 approach, I'm happy to provide the Court a copy.

25 THE COURT: You may. Thank you. I assume you don't

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1 have a certified version of this.

2 MR. COOK: This is all I could get on such short  
3 notice, your Honor. I would note the picture of the passport  
4 submitted in the government's letter yesterday has redacted the  
5 passport number which is contained in this letter, so I have no  
6 way to confirm that the numbers match up, but I presume that  
7 they do. In any case, I can represent to the Court that the  
8 passport itself was hand-delivered to UAE, I believe it was the  
9 consulate, by Mr. Kwok's immigration counsel.

10 THE COURT: You're relying on your client's word on  
11 that issue?

12 MR. COOK: I'm relying on the word of my client's  
13 lawyer, his immigration counsel, on that issue. I can get a  
14 declaration from him to that effect, your Honor.

15 THE COURT: And the Vanuatu passport?

16 MS. MCKINNEY: The Vanuatu passport, you can see in  
17 the picture submitted by the court, expired, and the government  
18 noted in its letter that it had other evidence, which it didn't  
19 talk about, suggesting that that citizenship had been  
20 renounced. I haven't seen any of that yet, but I know that to  
21 be the case from my consultations with his immigration counsel.

22 THE COURT: I'll allow rebuttal by the government.

23 MR. FINKEL: Thank you, your Honor.

24 If I can, your Honor, I'd like to start with the  
25 passport issue.

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1                   First, the defendant has proclaimed to have eleven  
2 passports, not just three. What I would also ask is, your  
3 Honor, how many defendants within a period of three or four  
4 years were able to obtain citizenship in three different  
5 countries and was on a pathway, or so he claims, to citizenship  
6 in a fourth, which is to say, your Honor, the defendant  
7 obtained citizenship in Vanuatu, obtained UAE citizenship, has  
8 a Hong Kong citizenship, and was trying to obtain citizenship  
9 here. He knows how to get travel documents. He was able to do  
10 it at least two other times, while he was on the run, according  
11 to the defense. So can he do it again? Of course he can.

12                  And, your Honor, I just want to be clear about  
13 something else. Our burden is not to show that he will flee  
14 internationally or go to a place where he can't be extradited.  
15 The question is whether he will return to Court as required.  
16 People flee within the United States, as your Honor knows.  
17 And, your Honor, the defendant, as defense counsel has not  
18 disputed, has a broad network of people who are sympathetic to  
19 him, who, according to their social media posts, believe that  
20 all of this is a political charge, which is to say they're  
21 motivated to help him. And it's not. Those are meritless  
22 claims, of course. This is a fraud crime that is substantiated  
23 by a significant amount of evidence which we have outlined in  
24 our papers.

25                  Your Honor, the defendant has been hiding. To respond

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1 to defense counsel's arguments: He hides behind his family, by  
2 keeping entities and properties not in his name. He hides  
3 apparently by saying that the \$394,000, just to be clear, was  
4 in a safe that was attached to a dressing room in which his 31  
5 suits that have his name hand-stitched into them were there.  
6 It is simply not credible, it is not credible for him to be  
7 unaware of \$394,000 in United States currency that he didn't  
8 disclose to pretrial services.

9 Your Honor, it's a big planet, and it's a big country.  
10 There are places for him to go that would be beyond the reach  
11 of China; that are beyond the reach of the United States. But  
12 the Court doesn't need to find that. The question is whether  
13 there's a risk of flight, the risk that he won't appear in  
14 court, and the government has certainly met that burden.

15 Your Honor, the fact that defense counsel concedes  
16 that the \$5 million they're offering to put up is not from the  
17 defendant means it has no moral suasion on him at all. There  
18 is no reason for him not to leave because he wouldn't be  
19 concerned about giving up money that wasn't even his to begin  
20 with. Your Honor, if this money was clean and unencumbered by  
21 both the fraud and the bankruptcy, I would have expected the  
22 defense to explain where it's from. I would have expected the  
23 defense to explain who their cosigners could be, who would have  
24 the unencumbered assets to support a \$25 million bond for the  
25 defendant and also moral suasion over him.

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1                   Your Honor, with respect to armed security, the only  
2 other case I'm aware of that happened in this district where it  
3 was approved was before Judge Broderick. It was over Southern  
4 District's objection. And in that case there were a host of  
5 problems that occurred because the incentive structure doesn't  
6 work. Armed security took the defendant out to dinner. Armed  
7 security ate with the defendant, which is not really a good  
8 idea if, you know, an armed security guard eats something and  
9 then falls asleep and the defendant can flee. Armed security  
10 didn't report violations. It doesn't work. And, fundamentally  
11 -- and the Second Circuit has been crystal clear about this --  
12 fundamentally, it is wrong.

13                   What I haven't heard also from the defense, your  
14 Honor, is how their conditions can satisfy the very real  
15 concerns about the danger to the community and the danger to  
16 this judicial process. There are no conditions that satisfy  
17 that.

18                   And, your Honor, as we've outlined, and as I've  
19 explained earlier, this has been documented by three judges.  
20 Three judges have found the defendant to essentially be  
21 obstructing, including an extensive opinion that we attached  
22 for your Honor to our March 15 submission, in which the  
23 bankruptcy judge makes clear that the defendant is causing his  
24 supporters to flood the docket or threatened with calamities  
25 the court-appointed bankruptcy trustee. None of the conditions

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1 proposed by the defense, none of them, none, can stop that.

2 Your Honor, the defendant has incredible means and  
3 know-how, as the defense concedes. He apparently has access to  
4 friends who are willing to front \$5 million -- \$5 million in  
5 cash. He can go where he wants. He has a network of people  
6 who will harbor him. He has international travel -- deep  
7 international travel experience, the ability to obtain travel  
8 documents from multiple different countries, apparently  
9 citizenship in multiple different countries. He has places to  
10 go. He has people who will help him. He has a reason to flee.  
11 And the asylum application, your Honor, the mere charges in  
12 this case threaten that. It's true. The asylum application is  
13 still pending, but the mere charges in this case threaten the  
14 asylum application.

15 The point is, your Honor, on flight, he's motivated to  
16 flee. He has the means and know-how to do it, and there is no  
17 condition that can stop that.

18 On danger, he continues to endanger the public, and  
19 that hasn't stopped, and there are no conditions that can stop  
20 that.

21 And on obstruction, your Honor, as three other courts  
22 have made clear, the defendant continues to obstruct the  
23 judicial process. He will obstruct it in this criminal case  
24 too.

25 There are no conditions, none, there are no conditions

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1 that can stop that.

2 At the end of the day, this is very straightforward.

3 This is very simple, we submit to the Court, the defendant

4 should be detained because he's a risk of flight, he presents a

5 danger, and he will obstruct.

6 THE COURT: All right. I'm going to reserve decision.

7 I'll issue a written decision. The matter is

8 adjourned.

9 (Adjourned)

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